



AGENDA ITEM NO.

COUNCIL MEETING Apr. 15, 2008APPROVED BYDEPARTMENT DIRECTORCITY MANAGER

April 15, 2008

FROM: BRUCE A. RUDD, Assistant City Manager
Office of the City Manager

SUBJECT: AUTHORIZE FORMATION OF A JOINT POWERS AUTHORITY TO ACT AS DESIGNATED PEG PROVIDER AS PROPOSED BY STAFF AND EXECUTION OF NECESSARY DOCUMENTS AND DIRECT STAFF TO PROVIDE ADMINISTRATIVE AND LEGAL SUPPORT TO THE JPA BOARD INCLUDING WITH REGARD TO RETAINING THE COMMUNITY MEDIA ACCESS COLLABORATIVE (CMAC) AS THIRD PARTY PROVIDER, SUBJECT TO ANNUALLY ALLOCATED FUNDING AND CITY ATTORNEY APPROVAL TO FORM

KEY RESULT AREA

Public Safety / One Fresno

RECOMMENDATION

Council authorize formation of a joint powers authority to act as designated PEG provider as proposed by staff and execution of necessary documents and direct staff to provide administrative and legal support to the JPA Board including with regard to retaining the Community Media Access Collaborative (CMAC) as third party provider, subject to annually allocated funding and City Attorney approval to form.

EXECUTIVE SUMMARY

Many California local governmental entities, including both the cities of Fresno and Clovis, have recently seen their locally granted cable franchises replaced with state granted franchises. The cities of Fresno and Clovis have each adopted new ordinances implementing the transition to state franchise consistent with the State of California's Digital Infrastructure and Video Competition Act ("DIVCA"). The new state franchises can generate funds for certain public, education, and government ("PEG") access channel purposes. On March 20, 2008, a meeting was held with staff representatives from the Cities of Fresno and Clovis as well as stakeholders from the Community Media Access Collaborative (CMAC), a local community based media programming/access nonprofit. The purpose of the meeting was to discuss joint strategies toward leveraging PEG funding through joint use facilities managed by CMAC, including how funding would be allocated and who would be responsible for providing PEG programming.

During these discussions, a proposed plan was developed that envisions the creation of a Joint Powers Authority (JPA) to act as designated PEG provider. The JPA would be created by and initially include the City of Fresno and the City of Clovis. The JPA would be responsible for negotiating and approving a Memorandum of Understanding or similar binding contract with CMAC as well as approving CMAC's business plan, whereunder CMAC would provide turn-key management/administration of the JPA's PEG Access Channel capacity/facilities, variously utilizing JPA PEG funds annually appropriated to the JPA by its members, and upon terms/conditions otherwise imposed by the JPA as discussed below. In the interim, a portion of City PEG funding would be placed into a City contingency account until such time as the JPA/CMAC agreement is approved by their respective boards.

BACKGROUND

On December 4, 2007, the Fresno City Council adopted Bill No. B-99/Ordinance 2007-94 in accordance with the requirements outlined in the State of California's Digital Infrastructure and Video Competition Act (DIVCA). This ordinance also included a provision that enables partial funding for public, education, and government (PEG) programming. A similar ordinance was also adopted by the City of Clovis in December of last year.

While the adoption of the ordinance enables additional funding needed to support certain PEG access channel purposes, the manner in which these resources are to be allocated has not been developed. For a number of years, a group of interested stakeholders has been working on a project known as the Community Media Access Collaborative (CMAC), including creation of a nonprofit entity whose mission is to develop and deliver this new era of PEG access/programming. CMAC has completed its formation process, adopted a set of by-laws (attached) and is currently working on developing a formal business plan.

On March 20, 2008, staff representatives from the City of Fresno and Clovis met with individuals from CMAC to discuss different joint strategies and alternatives that could be used to allocate, leverage and manage these new resources. Based on these discussions, the following is considered to be a viable plan for Council's consideration:

- The Cities of Clovis and Fresno will create a Joint Powers Authority (JPA) to act as their jointly designated PEG provider, which JPA will be responsible for negotiating and entering a third party provider Memorandum of Understanding/similar binding contract with CMAC.
- The JPA Board will initially consist of five members. Three members will be appointed by the Mayor of Fresno and confirmed by the Fresno City Council. The remaining two members will be appointed by the Clovis City Council. Members may not be Councilmembers of City of Fresno or City of Clovis.
- As part of the process of retaining CMAC, the JPA will review and approve CMAC's business plan that will include the manner in which the organization will be structured, five-year capital and operating requirements, as well as the sources of revenues that will be needed to provide PEG programming on an ongoing basis.
- In the interim pending retaining CMAC, a portion of Fresno and Clovis PEG funding currently being collected, as allocation by the City of Fresno and the City of Clovis, will be held in a contingency fund.
- Upon approval of the JPA/CMAC MOU/contract by their respective boards, the JPA will make a formal request to both City Councils to appropriate funding based on the approved Business Plan. The amount of revenue placed into contingency will be contained in the FY09 budget City of Fresno budget as well as the proposed FY09 City of Clovis budget.
- Staff from the Cities of Fresno and Clovis, jointly will provide necessary administrative and legal support to the JPA Board, provided said staff shall, at all times remain employees of the respective Cities, and subject to reserved legislative discretion and annually allocated and available funding.
- The liabilities and obligations of each of the City of Fresno and the City of Clovis under their JPA agreement shall not exceed the amount of PEG funding annually allocated by them, respectively.
- The JPA may admit additional members upon terms/conditions set by the JPA board.
- The JPA Agreement shall continue year to year, subject to reserved legislative discretion and annually allocated and available funding.
- The JPA shall provide its members with operational and financial reports/audits not less frequently than annually.
- The JPA shall not act in a manner inconsistent with members' DIVCA/local franchises.
- Any/all assets of the JPA shall be allocated amongst the members upon any dissolution of the JPA in accordance with the members' pro rata investment.

FISCAL IMPACT

It is estimated that more than \$500,000 in PEG funding will be received by the City of Fresno in FY09. A portion of these revenues not currently required for City PEG purposes will be placed into City contingency until requested by the JPA following its retainer of CMAC. The amount of revenues placed into contingency will be contained in the FY09 City of Fresno Budget and the FY09 City of Clovis budget.

Attached: CMAC By-Laws